

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LAMAR DONNELL KIRKLAND,

Petitioner,

v.

RAUL LOPEZ, Warden,

Respondent.

Case No.: 10-CV-03050-LHK

ORDER DENYING WITHOUT
PREJUDICE REQUEST TO STAY CASE

Petitioner Lamar Kirkland, a state prisoner, requests that the Court stay this federal habeas action pending resolution of a state habeas proceeding currently pending in the Contra Costa Superior Court. Having considered Petitioner's submissions and the relevant law, the Court DENIES without prejudice petitioner's request to stay the instant petition in order for petitioner to address the factors set forth below in *Rhines v. Webber*, 544 U.S. 269, 277-78 (2005), or, alternatively, to file an amended petition that includes only exhausted claims.

I. Background

Petitioner filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, raising eight claims. It appeared that some of Petitioner's claims were pending in a state habeas proceeding in the Contra Costa Superior Court. Because district courts cannot consider "mixed petitions" containing both exhausted and unexhausted claims, *Rhines*, 544 U.S. at 273, this Court issued an Order to Show Cause to Petitioner as to why the petition should not be dismissed without

1 prejudice for failure to exhaust state remedies. In response, Petitioner stated that he exhausted his
2 appeals from the state court judgment, but acknowledged that additional claims are now pending in
3 state court. Petitioner therefore requested that this Court stay the federal action pending the
4 outcome of the state habeas proceeding.

5 **II. Discussion**

6 District courts have the authority to issue stays, and AEDPA does not deprive them of that
7 authority. *Rhines*, 544 U.S. at 277-78. The district court's discretion to stay a mixed petition is
8 circumscribed by AEDPA's stated purposes of reducing delay in the execution of criminal
9 sentences and encouraging petitioners to seek relief in the state courts before filing their claims in
10 federal court. *Id.* Because the use of a stay and abeyance procedure has the potential to undermine
11 these dual purposes of AEDPA, its use is only appropriate where the district court has first
12 determined that there was good cause for the petitioner's failure to exhaust the claims in state court
13 and that the claims are potentially meritorious. *Id.* Moreover, where granting a stay, the district
14 court must effectuate the timeliness concerns in AEDPA by placing "reasonable limits on a
15 petitioner's trip to state court and back." *Id.* at 278.

16 Accordingly, a stay is allowed only under these conditions: (1) petitioner must show good
17 cause for his failure to exhaust the claims prior to filing the federal case; (2) the unexhausted
18 claims must not be "plainly meritless"; and (3) petitioner must not have engaged in "abusive
19 litigation tactics or intentional delay." *Rhines*, 544 U.S. at 277-78. In this case, Petitioner has not
20 addressed the standard set forth in *Rhines* or otherwise demonstrated that he satisfies these
21 conditions. The court cannot grant the stay unless petitioner shows good cause for his failure to
22 exhaust all of his claims before filing a federal petition and shows that his unexhausted claims have
23 merit.

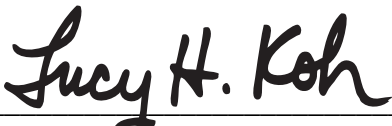
24 **III. Conclusion**

25 For the foregoing reasons, Petitioner's request to stay the instant action is DENIED without
26 prejudice. Petitioner may file a renewed motion to stay the petition addressing the issues set forth
27 above within **forty-five (45) days** of the date this order is filed. Alternatively, Petitioner may file
28 an amended petition containing only exhausted claims within **forty-five (45) days** of the date this

order is filed. If petitioner fails to file a motion to stay or an amended petition in conformity with this order, this action will be dismissed without prejudice.

IT IS SO ORDERED.

Dated: October 13, 2010



LUCY H. KOH
United States District Judge

United States District Court
For the Northern District of California